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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

United States Telephone Association
Petition for Rulemaking – 2000 Biennial
Regulatory Review

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RM _____

**PETITION FOR RULEMAKING
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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TABLE OF CONTENTS

SUMMARY	i
I. THE 1998 BIENNIAL REGULATORY REVIEW	1
A. The 1998 Biennial Regulatory Review Did Not Provide Significant Regulatory Relief	1
B. Section 11 Requires a Comprehensive Review of All Regulations	6
II. CONVERGENCE IN THE COMMUNICATIONS MARKET WARRANTS SECTION 11 REVIEW AS IT REFLECTS MEANINGFUL COMPETITION AND DEMONSTRATES THAT MANY OF THE CURRENT RULES ARE NOT IN THE PUBLIC INTEREST	8
III. SPECIFIC RULES CHANGES TO BE IMPLEMENTED IN THE 2000 BIENNIAL REGULATORY REVIEW	18
IV. CONCLUSION	46

SUMMARY

USTA's 2000 Biennial Regulatory Review proposal identifies rules which should be eliminated or modified because they are no longer in the public interest as specified in Section 11 of the Telecommunications Act of 1996. USTA provides data establishing that convergence in the communications marketplace demonstrates that meaningful economic competition exists. Pursuant to Section 11, the Commission is required to eliminate or streamline those rules that hinder the ability of incumbent LECs to compete in the converging marketplace. USTA's specific proposals include the following:

Part O – Commission Organization (Office of Managing Director): organize the Commission staff into integrated legal, policy, licensing, engineering and enforcement bureaus and eliminate the service-based bureaus which are no longer relevant in the converged marketplace.

Part 1 – Practice and Procedure (Office of General Counsel, Cable Services Bureau): establish time limits for Commission consideration of petitions for reconsideration and waivers and streamline Section 1.1417(d) to eliminate the requirement that carriers determine the average number of attachers per pole based on three different demographic zones.

Part 17 – Construction, Marking and Lighting of Antenna Structures (Mass Media Bureau): eliminate duplication that exists with rules promulgated by Federal Aviation Administration.

Part 32 – Uniform System of Accounts for Telecommunications Companies (Accounting Safeguards Division): set a firm date by to complete the conversion to GAAP and permit incumbent LECs that already rely on GAAP for financial purposes to utilize GAAP for regulatory purposes. As part of the transition, USTA recommends eleven steps the Commission

should undertake including to adopt Class B accounting for all carriers, eliminate the Part 32 expense matrix, eliminate jurisdictional difference accounts, eliminate pre-notification requirements, eliminate the Part 32 rules on materiality, eliminate the Part 32 rules for transactions with affiliates for nonregulated activities, streamline the affiliate transaction rules, allow de minimis nonregulated activity to be accounted for as regulated incidental activity, treat tariffed incidental interLATA services as regulated for accounting purposes, replace the annual inventories with GAAP requirements and consolidate the tax accounts.

Part 36 – Jurisdiction Separations Procedures (Accounting Policy Division): simplify the current procedure by freezing the jurisdictional allocations and categorization factors.

Part 42 – Preservation of Records of Communications Common Carriers (Accounting Safeguards Division): eliminate the majority of these rules and transfer Section 42.11 regarding the public availability of detariffed interexchange services to Part 61.

Part 43 – Reports of Common Carriers and Certain Affiliates (Accounting Safeguards Division): consolidate the ARMIS 43-01 through 43-04 into a single report and eliminate the ARMIS network reports. As an alternative, USTA proposes streamlining the network reports by eliminating Tables I, II, III, IV.A and V of ARMIS 43-05, eliminating the ARMIS 43-06, eliminating Tables I, II, III and IV of the 43-07, eliminating columns d through o on Table I and Tables II, III, and IV of the 43-08. USTA also urges the Commission to grant its petition for forbearance of depreciation reporting.

Part 51 – Interconnection (Competitive Pricing Division): revise the section to ensure that none of these rules apply to incumbent LEC provision of advanced services.

Part 61 – Tariffs (Competitive Pricing Division): restructure the current rules in such a way that this part only includes the tariffing requirements, modify the rules to be consistent with

the streamlined tariff filing requirements of the Act, streamline the cost support requirements, modify the notice requirements and permit contract-based tariffs.

Part 64 – Miscellaneous Rules (Accounting Safeguards Division, International Bureau, Policy and Program Planning Division, Competitive Pricing Division): eliminate Subparts A, C, G, H, and T and begin a transition toward the elimination of CAM filing and audit requirements by reducing the audit requirements, eliminating the three year usage forecasts for central office and outside plant accounts, eliminate the requirement to quantify CAM changes to time reporting, eliminate the fifteen day pre-approval, eliminate the product matrix in Section II, and eliminate the annual, external audit.

Part 65 – Interstate Rate of Return Prescription Procedures and Methodologies (Accounting Safeguards Division): streamline the reporting requirements.

Part 68 – Connection of Terminal Equipment to the Telephone Network (Network Services Division): so long as the Commission retains its authority to protect the network and to prevent equipment from causing harm to the network or the services of other users, the Commission should rely on standards organizations, manufacturers and testing laboratories to develop new and maintain existing technical requirements.

Part 69 – Access Charges (Competitive Pricing Division): restructure the current rules to apply this Part only to rate of return carriers, streamline the access structure into four elements and provide a pricing flexibility mechanism.

Part XX – Price Cap Regulation (Competitive Pricing Division): eliminate regulation of high capacity special access and dedicated transport services, eliminate study area averaging, permit zone pricing for all service categories, and adopt a simplified price cap basket structure.

These rules changes will eliminate the micro-management of incumbent LEC business operations which the 1996 Act rendered obsolete due to the new competitive paradigm which Congress developed and which the Commission is required to implement and which the converged marketplace renders unnecessary.

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UNITED STATES TELEPHONE ASSOCIATION
PETITION FOR RULEMAKING

The United States Telephone Association (USTA) respectfully submits a petition for rulemaking to request that the Commission initiate a review of all its rules pursuant to Section 11 of the Telecommunications Act of 1996. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S. USTA's member companies believe that they should be permitted to compete in the converging communications marketplace free of unnecessary government regulation. Just as USTA's members must adjust and respond to a converged, global communications marketplace, the Commission must also make an adjustment in how it goes about the task of fulfilling its statutory mandates. This petition provides specific recommendations to assist the Commission in making that adjustment by identifying rules which should be eliminated or modified because they are no longer in the public interest as required under Section 11.

I. THE 1998 BIENNIAL REGULATORY REVIEW.

A. The 1998 Biennial Regulatory Review Did Not Provide Significant Regulatory Relief.

The 1996 Act radically changed the regulatory paradigm for incumbent LECs that existed under the 1934 Act. The 1996 Act established a competitive paradigm whereby markets are

opened to competition and regulation is limited. The Congress developed a comprehensive competitive model under which local and interLATA long distance markets are to be opened to competition. It also set forth the obligations and responsibilities for the Commission; the state regulatory bodies, incumbent LECs and CLECs that it believed were necessary to implement the competitive model.

The Congress also determined that the regulations that were a by-product of the old paradigm should be reviewed and eliminated. The Congress provided two tools for that purpose. The Congress expanded the Commission's forbearance authority and determined that forbearance petitions be granted if not acted upon by the Commission within a specified time period. The Congress also established a biennial review proceeding under which the Commission is required to review all of its regulations every two years and to identify and streamline or eliminate regulation that is no longer necessary in the public interest as a result of meaningful economic competition. "Though Congress made judgments about the competitive ground-rules, it did not endeavor to sweep through our regulations and apply those judgments to each and every structural requirement on the books. Instead, it directed us to search out such rules and apply the new paradigm. To do so, it gave the Commission the twin engines of the biennial review and forbearance."¹

USTA filed a petition for rulemaking on September 30, 1998 in accordance with Section 11 proposing the elimination or streamlining of Commission rules contained in Parts 1, 17, 32, 36, 41, 42, 43, 61, 62, 63, 64, 65 and 69. USTA based its proposals on general principles similar to those articulated by the Commission in CC Docket No. 98-177, as well as those expressed by

¹ Separate Statement of Commissioner Michael K. Powell, Re: Petition for Forbearance of the Independent Telephone and Telecommunications Alliance (AAD File No. 98-43), and related proceedings (CC Docket No. 97-11, CC

Commissioner Furchtgott-Roth, to guide the public interest analysis that Section 11 requires.²

USTA provided the actual rules changes necessary to implement its proposals.

Instead of dealing with the requirements of Section 11 in the comprehensive manner recommended by USTA, the Commission left it up to the individual bureaus to make biennial review proposals. While an impressive number of proceedings were released, and at the time of this filing many have been adopted, significant, regulatory relief for incumbent LECs has not been achieved. USTA's proposal was not addressed. "The movement toward a competitive environment means that we must take into fuller consideration the necessity, viability and the potentially distorting competitive consequences of the old familiar regulatory devices. Thus, to the extent we must speculate about potential harm (to competition and consumers) we must, too, factor in more fully the potential disciplining effects of both real competition and potential competition. I see a continued tendency to invoke the ancient mantra 'to protect against discriminatory this or that' as glib justification for continued regulatory constraints. I believe we must work harder and press more heavily on the traditional rationales."³

The lack of meaningful regulatory relief was compounded by the increase in the regulation of incumbent LECs that often accompanied the Commission's efforts to open markets to competition. "My second concern rests with the extent that the Commission expresses a tendency to justify certain regulatory restrictions in the name of promoting or advancing competition. That alone, of course, may be worthy, but we are not free to do so in a manner that

Docket No. 98-81, CC Docket No. 96-150, CC Docket No. 98-117, WT Docket No. 96-162, CC Docket No. 96-149, CC Docket No. 96-61) at 3. [Powell].

² 1998 Biennial Regulatory Review – Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, Notice of Proposed Rulemaking, CC Docket No. 98-177 (rel. Nov. 24, 1998); Separate Statement of Commissioner Furchtgott-Roth, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20 and 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, Further Notice of Proposed Rulemaking (rel. Jan. 30, 1998).

involves intermediate judgments that differ from those reached by Congress.”⁴ In fact, one incumbent LEC estimated that its customers paid an average of \$23.40 per line in 1998 simply to defray the company’s costs of complying with regulation. That amounted to a record \$21.7 million in 1998, compared to \$18.4 million in 1997. According to Wayne Lafferty, Vice President of Regulatory and Government Affairs of Citizens Communications, the cost of regulatory requirements grew 18 percent between 1997 and 1998 at a time when telephone service providers are expected to operate in a free-market manner.⁵

For example, the Local Competition Order, ostensibly aimed at implementing two sections of the 1996 Act, spanned some 932 pages of single-spaced text (1,854 paragraphs and 4,062 footnotes) and weighed over 4 lbs.⁶ It was probably the most complex ruling in the Commission’s history, creating new rules imposing mandatory unbundling of network elements at TELRIC prices. It spawned appeals by virtually every state regulatory agency as well as most carriers.

Likewise, while maintaining and fostering the universal availability of telecommunications services at reasonable and affordable prices was a major objective of the 1996 Act, the Commission concentrated its efforts on implementing the new schools and libraries and rural health care programs. The Commission has yet to adopt a program for rural and high cost areas. In the seven Report and Orders and thirteen Orders on Reconsideration released thus far in CC Docket No. 96-45 alone, the Commission created a new quasi-

³ Powell at 1-2.

⁴ *Id.*

⁵ “Citizens Communications Calls for Reduction in Costly and Needless Regulation,” Citizens Press Release, April 19, 1999.

⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996), *modified on recon.*, 12 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F 3d 753 (8th Cir. 1997), *aff’d in part and rev’d in part sub nom. AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999).

governmental corporation to administer the new universal service mechanisms.⁷ This regulatory structure has increased the administrative costs of universal service by almost \$7 million in the third quarter of 1999 alone, or an estimated \$40 million annually. This new administrative expense is borne by telecommunications carriers and their customers.⁸

The Commission also created a new universal service worksheet that must be completed by all interstate carriers. This worksheet rivals the income tax forms in its detail and complexity. All carriers must separate interstate and intrastate revenues, gross and retail revenues and telecom and non-telecom revenues even though, unlike the incumbent LECs, most carriers do not have to keep such data and differentiate revenues in this manner. In some instances, the worksheet duplicates information that the incumbent LECs provide on other forms required by reporting forms. Although the Commission recently consolidated the contribution data, it did not simplify the complexity of the universal service reporting requirements.⁹

The 1996 Act sought to rollback regulation by mandating the comprehensive, “attic to basement” review of regulations contained in Section 11. The 1998 Biennial Regulatory Review as conducted by the Commission did not further that objective. In fact, there has been no meaningful, comprehensive review of the current rules. The maintenance of and, in some cases, increase in regulatory activity has skewed the competitive marketplace by handicapping

⁷ Originally, the Commission created three new, unaffiliated corporations to administer the new universal service fund. Each was to have its own Board of Directors and be accountable to the Commission. In 1998, the Commission consolidated the three into one corporation. *See*, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306 (rel. Nov. 20, 1998).

⁸ Dissenting Statements of Commissioner Harold Furchtgott-Roth, Proposed Third Quarter 1999 Universal Service Contribution Factors, CC Docket No. 96-45, Public Notice, Proposed First Quarter 1999 Universal Service Factors and Proposed Actions; CC Docket No. 96-45, Public Notice, FCC 98-318 (rel. Dec. 4, 1998).

⁹ 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, FCC 99-175 (rel. Jul. 14, 1998).

incumbent LECs in their efforts to compete. Part of the failure of the 1998 Biennial Review lies in the procedures relied upon by the Commission to implement that review.

B. Section 11 Requires a Comprehensive Review of All Regulations.

USTA believes that a comprehensive Section 11 review of all of its regulations is reasonable and actually provides some benefits in meeting the requirements of Section 11.

First, it is clear from the legislative history of the 1996 Act that Congress intended that the Commission review all of its rules every two years and to eliminate those which are not consistent with the public interest. As stated in the Senate debate, Section 11 “establishes a process that will require continuing justification for rules and regulations every two years. Every two years, in other words, all rules and regulations will be on the table. If they don’t make sense, there is a process established to terminate them.”¹⁰

Second, as discussed by Robert W. Hahn of the American Enterprise Institute and William E. Taylor of the National Economic Research Associates in a paper appended to USTA’s 1998 petition, piecemeal deregulation in the manner undertaken by the Commission suffers from the same inefficiencies as piecemeal regulation against which economists have fulminated for years.¹¹ Many of the Commission’s rules are interconnected in complex ways, thus review of individual rules or even different parts of the rules cannot generally be taken in isolation.

Third, a comprehensive review undertaken with a common set of guidelines is important to ensuring that the rules are subject to the same level of scrutiny. It is unclear what, if any, methods or standards were used to come up with 31 proceedings from the five volumes of

¹⁰ 141 Cong.Rec. S7881, June 7, 1995.

¹¹ Robert W. Hahn and William E. Taylor, “Economic Standards for the Biennial Review of Interstate Telecommunications Regulation”, USTA Petition for Rulemaking, September 30, 1998 at 23. [Hahn and Taylor].

regulations which currently exist. It is also unclear whether any of the standards that the Commission released after the biennial review was initiated were actually used by any of the individual bureaus in their separate proposals. As a result, similar proposals received disparate treatment and there was a significant difference in the proposals themselves.

Fourth, a comprehensive review makes it easier for the agency to view its rules dispassionately. It is relatively easy to identify outdated rules that are no longer applicable, such as the Part 41 rules on franking which were eliminated by the Commission as part of the 1998 biennial review.¹² Unfortunately, eliminating such irrelevant or unused rules will not produce large consumer welfare gains. “Of greatest concern are rules that are all too relevant – rules which currently bind firms and customers and distort their actions in telecommunications markets in ways for which the costs exceed the benefits. And, to make matters worse, these are the rules about which parties are most likely to have passionate disagreement in pursuit of self-interest.”¹³ Hahn and Taylor estimate that economic regulatory reform can provide welfare gains on the order of 0.3 percent of GDP for the U.S. They concluded that a serious, exhaustive and quantitative appraisal of the Commission’s rules is not just the law, it is manifestly in the public interest.

Fifth, addressing the Section 11 review in a comprehensive manner may provide some administrative efficiency. The Commission recently issued six separate orders on a single petition for forbearance.¹⁴ A comprehensive approach may alleviate the redundancy inherent in such a piecemeal approach.

¹² 1998 Biennial Regulatory Review – Elimination of Part 41 Telegraph and Telephone Franks, FCC 98-344, CC Docket No. 98-119, Report and Order (rel. Feb. 3, 1999).

¹³ Hahn and Taylor at 24.

¹⁴ Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, AAD File No. 98-43.

Having gone through this process twice, USTA certainly understands the challenges in meeting the requirements of the Act. Hahn and Taylor provided some suggestions on how to facilitate this process. They recommended shifting the burden of proof to parties seeking to retain a particular rule. “Because telecommunications markets have been opened to competition – and competition has developed at different rates in different markets – it is wiser policy to rely on imperfect market forces rather than imperfect regulation to control firm behavior in circumstances where the costs or benefits of particular regulations are difficult to quantify.”¹⁵ Rules that prospectively regulate behavior should be discouraged, at the outset, in favor of enforcement of rules that regulate actual behavior. Finally, they suggest that oversight by an agency such as the Office of Management and Budget could be useful in reducing agency chauvinism.

USTA would add another recommendation: comply with the definition of small business as recommended by the U.S. Small Business Administration by including small incumbent LECs within that definition.¹⁶ This will ensure that those companies with the least resources are not saddled with increasing administrative requirements at the outset of any proposed rulemaking.

II. CONVERGENCE IN THE COMMUNICATIONS MARKET WARRANTS SECTION 11 REVIEW AS IT REFLECTS MEANINGFUL COMPETITION AND DEMONSTRATES THAT MANY OF THE CURRENT RULES ARE NOT IN THE PUBLIC INTEREST.

USTA believes that convergence in the communications market makes the 2000 biennial regulatory review even more critical. The telecommunications marketplace has changed dramatically, even in the past two years, and it is clear that convergence in the industry will dominate the market structure in the new millenium. Convergence has accelerated due to

¹⁵ Hahn and Taylor at 26.

phenomenal increases in Internet, data and wireless traffic. As a result, billions of dollars are being invested as companies of all types position themselves to be national and global communications services providers. For example, Microsoft's recent investments demonstrate that customers will be receiving Internet access via cable modems, high-speed digital subscriber lines or various wireless technologies. Microsoft has indicated that it is interested in moving voice, data and video on the same system.¹⁷ It has entered into partnerships with AT&T, Nextel and Sprint as part of its approach to build software that can be licensed broadly to all telecommunications service providers. The evolution of the market reflects meaningful competition and demonstrates that many of the current common carrier rules are no longer in the public interest.

Increasingly, companies defy being labeled as just cable service providers, information service providers, wireless carriers or wireline carriers. This is now a multi-network, multi-provider, multi-service digital and broadband-based world in which companies at a business and operating level do not readily fit the old labels such as LEC, CLEC, ILEC, IXC, CMRS, CATV, ESP and ISP. These labels are only used in the regulatory arena because regulation and its costs only attach to certain labels. Which, if any, service providers will be regulated and to what degree has a profound impact on the valuations that investors place on companies and their assets as well as the long term viability of companies, particularly those subject to regulation that are disproportionate relative to the freedoms enjoyed by their competitors.

Certainly cable's position as a provider of broadband local loop access for a wide variety of video, Internet and telecommunications services compels a reexamination of the excessive

¹⁶ Letter from Jere W. Glover, Chief Counsel, Office of Advocacy and Eric E. Menge, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration, to Chairman William E. Kennard, May 27, 1999.

regulation imposed on incumbent LECs. Today, cable companies are demonstrating that consumers have a facilities-based alternative for their local telephone service that is completely independent of local telephone lines. AT&T Broadband and Internet Services (AT&T) and other MSOs have publicly committed to making this alternative available on a mass-market basis. If AT&T's \$58 billion offer for MediaOne Group, Inc. (MediaOne) is successful, "AT&T-owned [broadband local loops] would pass about 24.5 percent of all U.S. homes. But since both AT&T and MediaOne own partial shares of other cable companies, the total percentage reached would be about 61 percent."¹⁸ AT&T has the capability to provide customers with service packages that include video, Internet access, wireline, wireless and data services on an unrestricted basis and has stated its intention to do so. AT&T plans to offer "AT&T-branded cable telephony service to residential and small business customers over Time Warner's existing cable television systems in 33 states."¹⁹ In discussing its offer to acquire MediaOne, AT&T Chairman and CEO C. Michael Armstrong said that "[c]ombining AT&T and MediaOne means that far more American consumers will have a choice in local phone service... Together, AT&T and MediaOne will bring broadband video, voice and data services to more communities, more quickly than we could separately or, in MediaOne's case, with any other company."²⁰

In its April 1999 Market Month publication, Standard & Poor's stated that within two years, AT&T will be bundling local, long distance, Internet and cable services for an average monthly price of between \$75 and \$100. Dr. Daniel F. Spulber of Northwestern University

¹⁷ "Microsoft: Strategy of Courting Broadband Partners to Continue," *Communications Daily*, Vol. 19, No. 110, June 9, 1999 at 5-6.

¹⁸ "AT&T Makes \$58 Billion Offer for MediaOne," *The Washington Post*, April 23, 1999 at E3. Even without MediaOne, AT&T will have broadband local loop access to more than 50 million homes.

¹⁹ "AT&T and Time Warner Form Strategic Relationship to Offer Cable Telephony," Time Warner News Release, Feb. 1, 1999. Time Warner indicated that it will offer the same services currently available to local phone customers and that services will be competitively priced.

described the advantages of this type of bundling in a paper addressing AT&T's acquisition of Tele-Communications, Inc.

First, the presence of economies of scale and scope in marketing and sales allow companies offering multiple services to lower their unit costs. AT&T/TCI will derive pricing and marketing advantages over its competitors as a result of its ability to provide bundled services in a manner denied to others. For example, regulatory restrictions such as those limiting the provision of long distance and international services, prevent competing (RBOCs) from offering comparable product bundles. GTE must incur administrative and transaction costs in complying with affiliate regulations that counterbalance potential cost gains from offering multiple services. Because they are asymmetrically applied, the affiliate regulations on independent (LECs) serve as competition-reducing entry barriers. AT&T/TCI's marketing and sales cost savings from product bundling thus translate into unwarranted competitive advantages.

Second, transmission services offered over broadband transmission facilities provide clear advantages for customers seeking telecommunications and Internet access services...Such technological advances are presumably available to competing LECs and (CLECs) if they were to construct a comparable transmission system. However, asymmetric regulations again restrict the response of competitors. Under the 1996 Telecommunications Act, the LECs are subject to regulatory incumbent burdens that are not placed on new entrants. For example, ILECs must give their competitors access to unbundled network elements including those used to provide advanced services and possibly advanced digital subscriber lines (ADSL). ILECs also must offer advanced services to their competitors at below-retail rates and seek Commission approval for the prices of their ADSL services...Therefore the LECs and (CLECs) face technological disadvantages in competing with bundles of services to be provided by cable networks that cannot be overcome as a consequence of asymmetric regulatory restrictions.

Third, AT&T/TCI derives advantages from one-stop shopping convenience in ordering, service activation, billing and establishing transmission connections... Bundling is advantageous for customers if it eliminates the need to shop among many separate providers of multichannel video programming distribution services, high-speed Internet access, Internet content, and various telecommunications services again, such advantages are denied competitors who cannot offer similar bundles. Moreover, regulatory considerations prevent two or more competitors of AT&T/TCI from providing similar bundles through contracting arrangements. Perhaps of greater significance, vertical restrictions inherent in the AT&T/TCI business plan prevent LECs from assembling product bundles in coordination with other telephony or ISP companies who are denied access to AT&T/TCI transmission facilities. As a

²⁰ "AT&T Offers \$62 Billion in Cash, Stock and Assumed Debt and Preferred Equity for MediaOne Group," AT&T News Release, April 22, 1999 at 1.

consequence, AT&T/TCI will have significant market power in the market for bundled services within its service areas...²¹

MediaOne itself points out that telephone service over broadband cable loops is a reality today.

MediaOne's interactive Broadband network is the ideal solution for the emerging world of electronic commerce, because it has more two-way capacity than any other network. In addition to standard cable-TV service, the Broadband network can deliver telephone service, additional channels of audio and video and, of course, high-speed Internet access...[MediaOne] introduced MediaOne Digital Telephone service in six markets in 1998. The service, priced lower than the offerings of existing phone companies, proved attractive to consumers. By the end of the year [1998], 10,500 consumers had signed up for service. [Its] high-speed Internet service, as well, is growing in popularity, with 84,000 customers at the end of the year. Consumers understand it's the best deal in the marketplace.²²

As reported in *Telecommunications Reports*, MediaOne Group's broadband services arm has launched telephone service to about 7,500 homes in Northville Township in metropolitan Detroit.²³ MediaOne intends to follow up with an offering of facilities-based local telephone service to more than 50,000 homes in Western Wayne County initially, and then expand the offering to more than 100,000 metropolitan Detroit homes by the end of 1999. Eventually, it plans to offer digital telephony and high-speed Internet access to all 500,000 households in the Detroit area. MediaOne has also introduced cable phone service in Atlanta, Los Angeles, Jacksonville, Boston and Pompano, Florida.

MediaOne is not the only cable company currently providing telephone service over broadband cable loops. Cox Communications, Inc. provides digital telephone service in a number of markets, including Orange County, San Diego, Phoenix, and Omaha. As of March

²¹ Declaration of Daniel F. Spulber, CS Docket No. 98-178, Comments in Opposition of GTE, Attachment 1, October 29, 1998 at 9-12. [Footnotes omitted].

²² MediaOne Group, Inc., 1998 Summary Annual Report at 10.

²³ *Telecommunications Reports*, April 26, 1999 at 43 (electronic version).

31, 1999, Cox passed more than 700,000 'telephone ready' homes and provided digital telephone service to more than 41,000 customers. Jones Intercable has been offering the service in the Washington, D.C. metropolitan area. Cablevision is offering cable telephony on Long Island and in several Connecticut markets.

Cable is emerging even more quickly as an alternative for data traffic. More than 50 companies have deployed commercial cable modem services and cable modems are available in more than 100 local markets, including 25 of the top 30 MSAs.²⁴ TCI, Comcast and Cox have partnered to create @Home, which offers cable modem service to over 13 million homes and MediaOne and Time Warner partnered to create Roadrunner which offers cable modem service to eight million homes. These data channels will be capable of providing voice too.

Equipment manufacturers such as General Instrument proclaim the multi-service capabilities of broadband cable networks. "Ultimately, convergence is about dollars and cents. U.S. cable industry revenues were approximately \$35 billion in 1998 [cited source – Paul Kagan and Associates], and mainly derived from video services. Recent estimates anticipate a doubling of revenue for broadband cable operators over the next five to ten years [cited source – Paul Kagan and Associates] as deployment of digital cable, high-speed Internet access and telephony gains momentum."²⁵

Multibillion-dollar commitments have confirmed the cable network as the mainstream broadband platform: from the AT&T merger with TCI and the investments by Microsoft in Comcast and United Pan-Europe Communications, to Paul Allen's acquisitions of Marcus Cable and Charter Communications. These investments in cable companies and technologies endorse General Instrument's long-held vision of a significant broadband cable future.²⁶

²⁴ Peter W. Huber and Evan T. Leo, "UNE Fact Report", Submitted by USTA, CC Docket No. 96-98, May 26, 1999 at VI-4.

²⁵ General Instruments 1998 Annual Report at 5.

²⁶ "MediaOne Group Will Let Microsoft and America Online Explore Helping Comcast Sweeten its \$55.5 Billion Bid for the Company", *The Washington Post, DIGEST*, May 1, 1999 at E1.

Cable operators are rapidly expanding their cable modem deployment. High speed Internet access is expected to be available to 30 million homes by the end of this year through cable modems, compared to an estimated 1 million lines served by DSL.²⁷

Dr. Spulber urged the Commission to ensure that its regulations provided both incumbents and entrants an equal opportunity to compete:

To achieve the full benefits of market competition in telecommunications and information services, regulation must avoid distorting economic incentives as much as possible. Regulations should allow incumbents and entrants an equal opportunity to compete. Moreover, regulators must remain impartial, without favoring particular technologies, products and service offerings, or individual companies. The combination of regulations on LECs created by the 1996 Telecommunications Act and the absence of comparable regulations on broadband services to be offered by AT&T/TCI threatens to distort economic incentives of market participants, does not provide other companies in the market place with an equal opportunity to compete with AT&T/TCI, and tends to favor one technology and set of product offerings over others. Placing nondiscriminatory open access obligations on AT&T/TCI would help to restore competitive neutrality and reduce the vertical exclusion effects of the merger.²⁸

Incumbent LECs are not about to cede the future market opportunities to AT&T and others who have deployed broadband cable and Internet protocol networks as their platform to deliver communications services to customers. Delay in eliminating burdensome and unnecessary regulation will handicap efforts by incumbent LECs to compete against AT&T and other broadband communications companies. AT&T and other MSOs are executing their business plans today. Winners and losers in the market must not be determined by regulatory fiat. Incumbent LECs, at the very least, need relief from dominant carrier regulation within the franchise area of any cable companies that is offering or marketing telephone or equivalent services.²⁹

²⁷ Huber and Leo at VI-7.

²⁸ Spulber at 17-18.

²⁹ Letter from Mr. Roy Neel, President and CEO, USTA, to Chairman Kennard, May 4, 1999.

While cable may be the most popular broadband offering for customers, it is not the only competition that incumbent LECs face today. The Commission itself ranked wireless cable ahead of incumbent LECs in the current deployment of broadband facilities that serve the last mile. WinStar, Teligent and Advanced Radio Telecom are providing advanced services and are also expanding rapidly.³⁰ WinStar plans to be fully operational in 60 markets by the end of 2000 and plans to have access to 8,000 buildings by the end of 1999. Teligent expects to offer service in 40 markets across the country and NEXTLINK plans to develop networks covering a majority of the nation's top markets by the end of 2000. Satellites and public utilities are also offering broadband services. Columbia Energy Group recently announced that it plans to build a fiber network along its pipeline system linking New York City and Washington, D.C. to carry voice, data and video.³¹

In addition to these direct alternatives to ILECs networks, many competitors provide advanced services by attaching their own facilities to incumbent LECs' loops. CLECs already provide xDSL service in each of the ten largest MSAs and 25 of the top 50. They are in 21 states and 273 cities. Most of these markets are served by multiple CLECs. By comparison, incumbent LECs are only offering xDSL service in only seven of the ten largest MSAs and only 22 of the top 50.³² Covad Communications recently announced the completion of technical trials that demonstrated the use of asynchronous transfer mode technology over high-speed DSL Internet access service.³³ According to Covad, this technology combines digital voice and data in the local loop and includes features of plain old telephone service such as caller ID and call forwarding. Covad also reported that it is in discussions with potential partners to offer voice

³⁰ Huber and Leo at VI-11, VI-12.

³¹ "Columbia Energy Unveils Telecom Plan," *The Washington Post*, June 15, 1999 at E1.

³² Huber and Leo at VI-19.

over DSL service and will conduct market trials with customers later this year. As part of the test, which will be conducted with Jetstream Communications and CopperCom, Covad indicated that it completed toll-quality voice calls over DSL lines through a Call 5-voice switch. "Covad's goal is to deliver a product with the same functionality of today's business-class telephone service."³⁴

While convergence is one obvious form of competition that compels regulatory relief for incumbent LECs, there are, without question, other forms of competition that justify Commission review of its rules and the elimination of those rules which no longer serve the public interest. For example, CLECs have deployed 724 switches in 320 cities as of March 1999. As of that date, over one third of all BOC and GTE rate exchange areas in the U.S. were served by at least one CLEC voice switch; eighteen percent were served by at least two CLEC switches; twelve percent were served by at least three and nearly eight percent were served by four or more.³⁵ Further, current CLEC practices support the conclusion that the effective footprint of a CLEC switch is the entire LATA in which the CLEC switch is located.³⁶ Of course, long distance switches, packet-data switches, wireless switches and PBXs can all be used to substitute for incumbent LEC switches.

CLECs have also deployed fiber in all the major metropolitan areas and the overwhelming majority of second and third tier markets, serving nearly fifteen percent of all commercial office buildings in the U.S.³⁷ Forty-seven of the top 50 MSAs are served by at least three CLEC fiber networks; 29 are served by five or more CLECs; 16 are served by seven or

³³ "Amid New Products, Companies Stress Need for Open Architectures," *Communications Daily*, June 9, 1999 at 3.

³⁴ "Covad Successfully Executes Trials of Combined Voice and Data Over DSL," Covad Press Release, June 7, 1999.

³⁵ Huber and Leo at I-7. These figures only represent CLEC switches that are currently operational. They do not include traffic that is switched on packet rather than circuit switches.

more. The front page of *The Washington Post* recently featured an article on the “unprecedented building boom” taking place throughout the country as companies dig up streets in order to install fiber.³⁸ At least nine companies are currently digging up the streets of Washington, D.C. to install fiber. According to the article, companies are installing fiber to respond to the increasing demand for faster Internet connections.

Huber and Leo note that CLECs already generate a larger share of their revenues from the provision of facilities-based, switched local service than from any other category of service. They calculate that CLECs are serving between 2.5 and 5.4 million lines over their own (non-ILEC) facilities in BOC and GTE territories.³⁹ Based on the minutes of use exchanged between incumbent LEC networks and CLEC networks, they estimate that CLECs are serving 1.6 million voice grade lines on their own networks and 1.2 million data lines on their own networks.⁴⁰

CMRS services clearly offer a functional alternative to wireline connections. The national and local calling plans now offered by cellular and PCS providers are marketed as direct substitutes for wireline service. In announcing its OneRate plan, AT&T’s Michael Armstrong stated that the company would market the service not just as a complement to wireline service, but as a direct substitute. “Pretty soon, someone’s going to wonder why that [wireline] phone is

³⁶ *Id.* at I-25.

³⁷ *Id.* at II-6.

³⁸ “A Nation Plugged In and Dug Up,” *The Washington Post*, July 15, 1999 at 1.

³⁹ Huber and Leo at III-15.

⁴⁰ *Id.* CLECs exchanged 13.2 billion MOUs with the BOCs and GTE, including 804 million MOUs originating on CLEC networks and terminating on BOC/GTE networks and 12.4 billion MOUs originating or BOC/GTE networks and terminating on CLEC networks.

sitting there.”⁴¹ Sprint agrees, “Its no wonder our customers are beginning to use their Sprint PCS phones as their one and only communications tool every day.”⁴²

Certainly these circumstances which exist in the communications market justify a review of the current rules to determine whether any such rule is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service as required in Section 11(a)(2) of the 1996 Act. If so, pursuant to Section 11(b) the Commission must repeal or modify such rule.

III. SPECIFIC RULES CHANGES TO BE IMPLEMENTED IN THE 2000 BIENNIAL REGULATORY REVIEW.

USTA provides the following recommendations for eliminating and/or modifying current rules pursuant to Section 11. With the exception of Part 0, only those sections with specific rules changes are listed. The actual rules changes are contained in the attachments.

Part 0 – Commission Organization (Office of Managing Director).

While USTA has not included any specific rules changes to Part 0, USTA President and CEO Roy Neel outlined several recommendations during the recent Public Forum on the “Future of the FCC in the 21st Century”. While the purpose of the forum was to solicit ideas to assist the Chairman in preparing a five year strategic plan for restructuring and streamlining Commission functions and management, Mr. Neel urged the Commission to move quickly. The Commission must reform and restructure immediately in order to be able to adequately address the market developments described above. Incumbent LECs and their customers cannot wait five years for the Commission to prepare itself to address today’s issues. Inaction or delay will have negative

⁴¹ “AT&T Wireless Joins Sprint PCS in Single-Rate Offer, But Adds Contracts,” *Communications Daily*, May 8, 1998 at 7-8.

⁴² “Sprint PCS Unveils All-Inclusive Nationwide Service Plans With Prices as Low as a Dime a Minute, Anytime, Anywhere,” Sprint PCS News Release, Oct. 1, 1998.

impacts on the continued development of the communications industry and the availability of advanced services and products.

USTA recommends that the Commission immediately organize its staff into integrated legal, policy, licensing, engineering and enforcement bureaus. There should be no service-based bureaus as such bureaus are not relevant given the convergence and blending of services and technologies which are taking place in the marketplace.

Part 1 – Practice and Procedure (Office of General Counsel, Cable Services Bureau).

Timely resolution of applications and petitions is critical. The fact that the current rules allow the Commission not to act on petitions for reconsideration and waivers creates uncertainty for both incumbent LECs and their customers. As a result, new service offerings may be delayed indefinitely or, customers must do business with incumbent LEC competitors. USTA urges the Commission to implement time limits to provide certainty and ensure resolution of issues. USTA recommends limiting the time in which the Commission may consider waiver requests, petitions for reconsideration and applications for review to one year. If such filings are not denied within one year, they should be deemed granted.

The Commission should also streamline the pole attachment rules contained in Part 1. USTA recommends that the Commission address Section 1.1417(d) in the upcoming biennial review.⁴³ This rule requires the carrier to determine the average number of attachers per pole based on three different demographic zones within the state. This is a significant administrative burden for carriers with very little, if any benefit in return. Carriers do not maintain pole records in this manner and must perform a sampling study to develop this number. The location definitions are confusing and overlapping and create far more complexity than is necessary.